



## POLICE DEPARTMENT

June 15, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Cuintyna Carter  
Tax Registry No. 934590  
Property Clerk Division  
Disciplinary Case No. 83570/08  
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The above-named member of the Department appeared before the Court on January 19, 2011, February 17, 2011, and March 23, 2011, charged with the following:

1. Said Police Officer Cuintyna Carter, assigned to Transit Bureau District #33, while off-duty, on or about and between November 24, 2007 and November 25, 2007, having been involved in an off-duty police incident in Wilmington, North Carolina, did thereafter neglect to report said incident to the Operations Unit, as required.

### P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Cuintyna Carter, assigned to Transit Bureau District #33, while off-duty, on or about and between November 24, 2007 and November 25, 2007, while in Wilmington, North Carolina, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Officer did stab Carlos Gause.

### P.G. 212-32, Page 1, Paragraphs 1 and 2 – OFF DUTY INCIDENTS<sup>1</sup>

3. Said Police Officer Cuintyna Carter, assigned to Transit Bureau District #33, while off-duty, on or about and between January 1, 2007 and December 31, 2007, did wrongfully and without just cause make an inquiry in the FINEST system, which was not related to official Department business. (*As amended*)

### P.G. 219-14, Page 1, Paragraphs 2 and 4 – DEPARTMENT COMPUTER SYSTEMS

<sup>1</sup> The Advocate noted that the Patrol Guide references listed in the amended charges were switched for the first two specifications. That is, PG § 212-32, reporting off-duty incidents, was meant to correspond to Specification No. 1, and PG § 203-10, the good-order provision, was meant to correspond to Specification No. 2.

4 Said Police Officer Cuintyna Carter, on or about and between January 1, 2005 and November 25, 2007, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said police officer did knowingly associate with a person reasonably believed to have engaged in criminal activity, in that said police officer did have contact with Carlos Gause, whom said police officer knew to have a prior conviction *(As amended)*

P G 203-10, Page 1, Paragraph 2 (c) – GENERAL REGULATIONS  
PUBLIC CONTACT – PROHIBITED CONDUCT

5 Said Police Officer Cuintyna Carter, assigned to Transit Bureau District #33, while off-duty, on or about and between November 24, 2007 and November 25, 2007, while in Wilmington, North Carolina, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer was in possession of a dangerous knife with the intent to use same unlawfully against another *(As amended)*

P G 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

[REDACTED]

The Department was represented by Rudolph Behrmann, Esq , Department Advocate's Office Respondent was represented by Craig Hayes, Esq

Respondent, through counsel, entered a plea of Not Guilty to Specification Nos 2 and 5 She pleaded Guilty to Specification Nos 1, 3 and 4, and testified in mitigation of the penalty Specification No 6 was dismissed by the Department before trial A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review

DECISION

Having pleaded Guilty to Specification Nos 1, 3 and 4, Respondent is found Guilty  
Respondent is found Not Guilty of Specification Nos 2 and 5

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Psychologist Cecile Irvine, Lieutenant Michael King, and  
Lieutenant James Dennedy as witnesses

Psychologist Cecile Irvine

Dr Cecile Irvine was employed by the Department as a police psychologist She  
performed fitness-for-duty evaluations and trauma debriefing, among other responsibilities On  
November 26, 2007, Irvine conducted a fitness-for-duty evaluation of Respondent She was  
referred to Irvine's command after the Department received a report that she had made [REDACTED]  
statements The report "came from someone she was involved with in North Carolina," Gause  
He told the Department that he and Respondent had gotten into an argument, she stabbed him,  
and told him she wanted to [REDACTED] when she returned to New York Gause called the  
Department while Respondent was en route

Respondent told Irvine that she went to meet Gause at a house and they got into "a play  
fight " They were "playfully pushing each other then it turned serious " Respondent got into her  
car, but the police arrived Respondent did not say that the argument "grew any more violent or  
anything like that " She did not state that Gause injured her in any way

Irvine testified that she called Gause to get more information. He told her he could not talk at that moment but would call her right back. He did not. Irvine tried him again several times, but was unsuccessful. She believed he was not being cooperative, so she released Respondent. Gause called back about an hour later. He told Irvine that he and Respondent had argued. Respondent, according to Gause, was "hysterical and emotional," stabbed him, and said she wanted [REDACTED]. She had tried to grab a knife and had to be held back by bystanders.

Gause told Irvine that he went to the hospital and received three stitches. When he talked to Respondent on the phone, she repeated her [REDACTED].

Irvine testified that she was concerned about Respondent and had her transported to [REDACTED] Hospital [REDACTED] H) for further [REDACTED].

On cross-examination, Irvine testified that her initial consult with Respondent took 45 to 60 minutes. Irvine let Respondent go because she deemed her not a threat to herself or anyone else. Had she been called by Respondent's commanding officer at that point, and told, "[Y]ou know what, the thing in North Carolina we investigated it, it has no merit we want to give her her gun back," Irvine would not have had a problem.

Irvine was unable to corroborate any of Gause's statements about Respondent's alleged [REDACTED]. The doctor did not learn the identity of the other individuals that supposedly held back Respondent. It was Irvine's understanding from interviews with Respondent that after the altercation with Gause, she drove to New York with other people, including children. Irvine did not contact these other people because "[t]ypically we just don't do that." After speaking with Gause, her concerns became heightened. Based on [REDACTED]'s findings, Gause could have been lying. Gause told Irvine that Respondent made the [REDACTED] statement during a phone call while she was driving back to New York.

Irvine agreed that the [REDACTED] H doctors concluded that Respondent was not a threat to herself or anyone else

Irvine continued to see Respondent about once every three months for the next three years. Each session lasted 20 to 45 minutes. At the end of the multi-year period, on July 27, 2010, Irvine prepared a "gun return report." Irvine recalled writing in her report that Respondent did not present with any [REDACTED] symptoms. She also recalled writing that the Wilmington, North Carolina and New York City Police Departments (WPD and NYPD, respectively) were "unable to produce any corroborating evidence." Irvine detailed that there was "no known history" and "none since" the incident. She recommended that Respondent's firearm could be returned to her.

#### Lieutenant Michael King

King was previously assigned to the Internal Affairs Bureau (IAB), as a sergeant. He worked on the investigation into Respondent concerning the allegation by Gause that she stabbed him in "Wilmington County North Carolina" (i.e., the city of Wilmington in New Hanover County, North Carolina). The investigation began with a call to IAB from Transit District 33 (Respondent's command at the time).

King spoke to Sergeant Stansbury of the Wilmington Police Department. Stansbury told King that Gause called 911 and said he was stabbed by Respondent. WPD responded to the location, but Gause was not there. WPD stopped Respondent's vehicle and placed her into custody. Gause was visited at the hospital by WPD, but he refused to cooperate and said "it was an accident." Respondent was released from custody.

King testified that Gause was then interviewed by Lieutenant Schneider of IAB. This interview was recorded over the phone. Gause told Schneider that Respondent had stabbed him intentionally. IAB informed the North Carolina authorities of this, and they put out a warrant for Respondent's arrest. Gause subsequently could not be located, however, and "refused to cooperate." King never spoke with him.

Nevertheless, Respondent was arrested. King believed that she was charged with disorderly conduct in North Carolina and was sentenced to pay a fine.

King received the WPD's complaint report on the incident and 911 recordings (see Department's Exhibit [DX] 2, WPD complaint report & radio transmissions, DX 1, 911 recordings, DX 6, transcript). King testified that on the 911 recording, Gause was heard saying, "Get off of me, she stabbed me," and Respondent said, "I'm sorry."

On cross-examination, King agreed that Gause had a "significant" criminal history. There were ten arrests, seven felony charges, resulting in three convictions, two of them for felonies. For example, in 1991, Gause was arrested for invalid use of a credit card with fraudulent intent and attempted assault on a police officer. He pleaded guilty to disorderly conduct in Kings County. In 1992, he pleaded guilty to first-degree robbery in a case that involved the use of a shotgun.

King agreed that Gause stated that Respondent had threatened to [REDACTED]. King also agreed that the investigation did not uncover any corroboration of this assertion. While on the drive home, Respondent was asked to call into the precinct every hour, and she did so.

King testified that Respondent was originally charged with a felony in North Carolina. She reached an agreement with the prosecution to plead guilty to disorderly conduct. King agreed that the prosecution had problems because Gause kept changing his story when speaking

to them. The prosecutors told King that Gause was "not cooperative whatsoever." The prosecution had no eyewitnesses to the incident. Gause did not give NYPD investigators permission to obtain his medical records. When they asked, he said his injury was accidental.

Lieutenant James Dennedy

Dennedy was also previously assigned to IAB as a sergeant. He interviewed Gause in connection with this investigation on November 25, 2007. The interview was over the phone and was recorded (see DX 4 & 4a, recording and transcript).<sup>2</sup> Dennedy believed he called Gause's home number in North Carolina.

Gause told Dennedy that he and Respondent had a fight, and she stabbed him in the stomach. She was headed back to New York State, and while en route, told Gause she planned to [REDACTED]

Dennedy had no involvement in the investigation after the call-out stage.

On cross-examination, Dennedy agreed that Gause admitted telling the local police, immediately after the incident while at the hospital, that it was an accident. Perhaps "a couple of hours later," when speaking to Dennedy, Gause contended that it was intentional.

Dennedy agreed that Gause told him there were three other individuals, including a teenager and a small child, with Respondent on the way back to New York. Dennedy did not speak to the older two individuals.

Gause stated that he received one small staple for the wound in his stomach.

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<sup>2</sup> Dennedy spoke to Gause first, followed by Schneider. The recording and transcript contain both conversations.

Statement of Carlos Gause (see DX 4, recording, DX 4a, transcript)

Gause stated that Respondent stabbed him in the stomach, but he did not want her to get arrested, so he told the police it was an accident. She told him she was going [REDACTED] when she got back to New York because she [REDACTED] him.

Gause stated that he and Respondent were in the course of breaking up. She asked him for money, but he did not want to give it to her because she had damaged some of his stuff. He ended up giving her the money, but "she makes me say if I want to come over there, and she got a attitude, and then I didn't see what happened, and next thing I know, she had stuck me with the knife."

Respondent's Case

Respondent testified on her own behalf

Respondent

Respondent testified that she first met Gause when she was 12 or 13 years old. First they were friends, but became intimate when they were 16 years old. They continued dating past high school. She became a Police Officer when she was 32 years old. She knew, before her appointment, that Gause had a criminal record, but did not know specifically what his convictions were. She visited him in prison when she was in her early 20s.

Respondent admitted that she re-started her relationship with Gause in 2005. She admitted that it was a mistake to do so. She thought he had changed, noting that he was working for the New York City Sanitation Department. She admitted that she was wrong about him having changed. "I'm sorry," she testified. "That was a huge mistake."



Respondent also admitted that she searched Gause in the Finest system because she did not trust him and wanted to find out more information on him, including "all the dates" (i.e., the dates of his criminal convictions)

On November 24, 2007 (the Saturday of Thanksgiving weekend), Respondent was in an apartment in North Carolina that she rented. She "would go back and forth from New York to North Carolina often, so I would stay there sometimes on vacation." Her relationship with Gause was going poorly. He lived in North Carolina at the time.

Respondent testified that she and Gause had been arguing about her going out. To prevent her from doing so, he took her wallet and her vehicle, a [REDACTED] black [REDACTED]. She needed to be back at work the next Monday, and she had no way to get home.

The next day, Respondent went to a home where she believed Gause was (he had returned her vehicle by then). When he came outside, Respondent said, "Where the fuck is my money at? Where's my wallet? Where's my credit cards?" Gause started laughing, saying, "Hey, baby, what are you doing over here?" Respondent answered that she was "tired of this. It is over, I'm done. I just want my money and I just want to go home." He put his arm around her and led her away from her vehicle, still trying to laugh it off. He was half a foot taller and over 100 pounds heavier than her.

Respondent testified that Gause's demeanor changed. He asked Respondent, "What the fuck are you doing here and what made you come around here? How did I know where he was at?" He was spitting and yelling in her face, and she "just was really nervous because I knew he was getting ready to become violent." Gause pushed Respondent hard in the chest, which hurt, and she pushed him back in the shoulder. He grabbed her, and she punched him "on the side of

the ear, on the side of his face " They began punching each other and fell to the floor He put all his weight on her so she could not get up, saying "he fucking hates me" and that she was a bitch

Respondent testified that she and Gause fell into high grass, "but in that area there is a lot of rough terrain " The grass came to above her calf Respondent told Gause to let her go, to just give her the money and she would leave him alone She was crying and "fighting for my life," kicking him in the legs and stomach

Respondent testified that the only other people present were those in her vehicle a female relative of Gause, her baby, and her younger brother

Respondent stated that she was able to get up when Gause "got up He kind of fell on his sides Fell off of me, then he got up and I got up " Gause called 911 Respondent told him, "I'm sorry, I love you " She said this because she "was sorry I even came over there, and I'm a police officer and I'm here fighting, and I was just mad " She was crying when he called 911, and felt she had caused the incident by going over there

Respondent denied being armed, and said that she never had a knife Gause did not have a knife either When asked if she stabbed him, she replied, "That's what I was told once I came to New York " She clarified that she did not stab Gause

Respondent asserted that she was injured behind her ear and on the side of her face This occurred when she "fell on the floor because of the area with the grass and rocks and stuff"

Gause returned Respondent's money and credit cards to his relative, then left The police arrived, and when Respondent saw that the officer's hand was on his gun, she got out of her car and told the officer she was the one they were looking for She had not left, she was sitting in the driver's seat "basically in disbelief about the whole situation "

Respondent identified herself as an NYPD officer and showed them her identification card. She was handcuffed and placed into the patrol car. After about five minutes, when the police got word that Gause was at the hospital and "made a statement," she was released, with the WPD sergeant telling her to "get my ass out of the [sic] there."

About half an hour later, Respondent called her union delegate, Police Officer Carr. When she informed him what had occurred, but that she had been released, Carr was "like there's nothing to report." Nevertheless, Respondent admitted at trial that she should have reported the incident to the Operations Unit.

Respondent testified that she continued arguing with Gause over the phone. He said he had called the NYPD about the incident and told her, "Guess who is taking who down now." She never threatened [REDACTED].

When Respondent got back to New York, she went to her command and reported the incident. She was ordered to report to the Medical Division. Subsequently, IAB informed her that there was a warrant for her arrest in North Carolina. She surrendered herself to North Carolina authorities and was charged with stabbing Gause. She pleaded guilty to the "violation" of disorderly conduct and was sentenced to pay a fine. Respondent accepted the plea, and when she allocuted to the charge, she did not admit stabbing Gause. She had no contact or relationship with Gause any longer.

On cross-examination, Respondent testified that she did not contact the WPD to assist in getting her items back because that would have escalated the situation. She agreed that she did not know Gause had been injured. She did not recall him telling her to stay away from him or that she had stabbed him. One of the reasons she told him she was sorry was that "I could have alleviated if I had known him because I know his temper." She felt humiliated.

Respondent turned her vehicle ignition off when she got to Gause's location, but did not recall having the keys in her hand

Respondent admitted that she did not tell the WPD officers that Gause had physically assaulted her. She admitted that her injuries did not become visible until the next day. She was not bleeding, but was swollen and had a "knot" behind her ear. Gause had pushed and grabbed her in the past, but had never punched her. She was, however, not "shocked" when he hit her on the day of the incident, because he was getting so upset. He was gesturing and raising his voice, so she "assumed" he would strike her.

Respondent testified that she was inside her vehicle when Gause was on the phone with 911. "It was a short distance. We weren't directly in front of one another." She claimed that they were still yelling and arguing with each other, and that Gause apologized to her as well.

Respondent admitted telling Irvine that she and Gause were "arguing and playing around." She told Irvine "the beginning of the incident, I didn't tell her the entire incident," noting that she had just driven 15 to 16 hours from North Carolina. She was also scared and traumatized. "[L]ater down the line," once they had built a rapport, Respondent told Irvine the whole story. She asserted that Irvine's "focus" was on whether she had stabbed Gause, but admitted that she was being evaluated at the Medical Division because she had allegedly threatened [REDACTED].

### FINDINGS AND ANALYSIS

#### Specification Nos. 1, 3 & 4

Having pleaded Guilty, Respondent is found Guilty.

Specification Nos 2 & 5

Respondent is charged with stabbing Carlos Gause, a man with whom she formerly had a relationship. She is also charged with possessing a dangerous knife with the intent to use it unlawfully against another. Gause did not appear at the hearing, so his hearsay account was admitted through his interview with investigators. Also admitted were several 911 calls.

The incident took place on November 24, 2007. Both Gause and Respondent were in the Wilmington, North Carolina, area, where Respondent rented an apartment. They got into an argument on the front lawn of someone else's apartment complex. Gause claimed that Respondent stabbed him with a knife. Respondent admitted that she struggled with Gause physically, but asserted that this was in self-defense. They fell to the ground together. She denied stabbing him, or even possessing a knife.

Department investigators interviewed Gause by phone the day of or the day after the incident. He said that Respondent had stabbed him, but that he had not wanted her to get arrested, so he told the local police and medical personnel that it was an accident. This was the sum and substance of Gause's account about the stabbing, most of the questioning revolved around Gause's assertion that Respondent made [REDACTED].

There are 911 calls from several unidentified 911 callers, although Gause and Respondent can be heard in some of the calls. In one 911 call, Respondent kept telling Gause that she loved him, but he kept telling her to get away from him, yelling, "She stabbed me." After this, Respondent said, "I'm sorry."

Gause did not appear at trial, so the Court is left to rely on his statements to Department investigators and what he was heard saying on the 911 recordings. Although hearsay is admissible in this forum, see Matter of Ayala v Ward, 170 A D 2d 235 (1st Dept. 1991), there

are significant reasons for caution where, as here, there is a close question of fact on the issue of credibility Cf Case No 77005/01, signed May 27, 2002 Because the NYPD investigators were focused on locating Respondent in light of Gause's claim that she had made [REDACTED], there was not much of a statement to explore Moreover, at the hospital, Gause had recanted his original allegation about the stabbing, saying his injuries were the result of an accident It is unknown whether he meant that Respondent accidentally stabbed him, or that he was injured accidentally in some other way One way in which he could have been injured, consistent with Respondent's testimony in which she portrayed herself as struggling with Gause in self-defense, is by a fall onto high grass which contained rough terrain and other "stuff" Of course, knowing only that Gause suffered a wound requiring one surgical staple, none of this is certain It was only when he spoke to NYPD investigators that he said that Respondent intentionally injured him Yet Gause continued to equivocate when speaking to prosecutors, going back and forth the same way with them

Furthermore, in light of Gause's failure to testify, Respondent's counsel was unable to explore possible motives to lie to NYPD investigators, like anger at Respondent or a desire to get her in trouble with her employer Respondent testified that Gause told her, on her way back to New York, "Guess who is taking who down now " The Court could not observe Gause's demeanor or assess the credibility of his account after the test of cross-examination There is no independent evidence that Gause was ever actually stabbed The Wilmington Police Department report indicates that no weapon was found Gause did not cooperate with this Department's case against Respondent, and investigators were unable to obtain any medical records, even a paramedic's report, that might have confirmed in some way any injury to Gause was caused by a knife Cf Matter of Vallebuona v Kenik, 294 A D 2d 44, 51 (1st Dept 2002)

(reference in medical records to "deep" wound did not support hearing officer's conclusion that injury was consistent with intentional blows of a flashlight, but inconsistent with a fall or violent struggle on hard surface, inter alia, no medical testimony supported hearing officer's determination)

The 911 calls do not add much to the case in the absence of other evidence that there was a stabbing. The most specific 911 caller said, "This girl just stabbed her boyfriend." When the operator asked for a description of the knife, however, the caller said that the woman picked up the man's cane "and was hitting him with it." Without more information, it is unknown whether the callers might have seen something that looked like a stabbing but was actually some other kind of injury.

Respondent's guilty plea to the North Carolina offense of disorderly conduct does not prove her guilt of the specifications charged here. No allocution was entered into evidence, and it is unclear what subdivision of the North Carolina statute she might have pleaded guilty to. That statute, however, provides that disorderly conduct is "a public disturbance intentionally caused by any person who," inter alia, "[e]ngages in fighting or other violent conduct or in conduct creating the threat of imminent fighting or other violence." N.C. Gen. Stat. § 14-288.4(a)(1), cf. Penal Law § 240.20(1) (individual commits disorderly conduct "when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof [h]e engages in fighting or in violent, tumultuous or threatening behavior"). It is possible that Respondent pleaded guilty to this subdivision. If so, it would have been consistent with her version of events.

In sum, the Department failed to prove by a preponderance of the evidence that Respondent stabbed Gause. As such, it also failed to prove that she possessed a "dangerous

knife," see generally Matter of Jamie D., 59 N Y 2d 589, 592-93 (1983) (under weapons-possession statutes, whether a non-per se weapon is a "dangerous knife" depends upon particular manner and context in which it is used) As such, Respondent is found Not Guilty of Specification Nos 2 and 5

### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined See Matter of Pell v Board of Education, 34 N Y 2d 222, 240 (1974) Respondent was appointed to the Department as a Police Officer on July 1, 2004 Information from her personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum

Respondent has been found Guilty of several Patrol Guide violations regarding a relationship she had with Carlos Gause She knew that Gause had a felony record because she visited him in state prison (before she became a Police Officer) She nevertheless continued to maintain a relationship with him Her rationale was that he was going to change Of course, it is an individual's criminal past, not his future intentions or the Department member's intentions for him, that determines whether the member may associate with him Respondent also made an unauthorized inquiry concerning Gause in the Finest computer system

Gause and Respondent got into a physical altercation in Wilmington, North Carolina Gause was injured and the Wilmington police detained Respondent with the intent of arresting her Gause, however, told the authorities there that it was an accident and he did not want to prosecute Respondent was released from custody, but instead of informing this Department about the incident, she drove back to New York as though nothing had happened Had she




notified Operations, the Department's frantic efforts to locate what they believed to be [REDACTED] member of the service might have been avoided. More concrete information about Gause's injury also could have been elicited.

These incidents should not be looked at as isolated violations of the Patrol Guide. They constituted a course of conduct, in which Respondent engaged in an ongoing romantic relationship with someone that had a felony criminal record. This culminated in a physical altercation, Respondent's detention, and her failure to report any of it to the Department.

Accordingly, the Court recommends that Respondent be *DISMISSED* from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time she is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit the 42 days already served on suspension as a result of her Wilmington arrest, plus an additional 3 vacation days, for a total of 45 penalty days. See Case No. 85646/09, signed Jan. 25, 2011 (20-year police officer with no prior disciplinary record received penalty of 50 vacation days and one year dismissal probation for criminal association, failure to identify herself, while off-duty, at a car stop and arrest of her boyfriend, continuing to associate with known criminal after being ordered not to, and engaging in phone conversations with boyfriend while in police custody and after his arrest).

Respectfully submitted,

**APPROVED**  
SEP 02 2011  
RAYMOND W. KELLY  
POLICE COMMISSIONER

  
David S. Weisel  
Assistant Deputy Commissioner - Trials

POLICE DEPARTMENT  
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials  
To Police Commissioner  
Subject CONFIDENTIAL MEMORANDUM  
POLICE OFFICER CUINTYNA CARTER  
TAX REGISTRY NO 934590  
DISCIPLINARY CASE NO 83570/08

Respondent received an overall rating of 3.5 “Highly Competent/Competent” on her last three annual performance evaluations. She has been awarded one medal for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent, who has no prior formal disciplinary record, has been on Level-II Domestic Monitoring since February 2008.

For your consideration



David S. Weisel  
Assistant Deputy Commissioner – Trials